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Supreme Court, U.S.
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No. 97-391

In The

Supreme Court of the United States

October Term, 1997

ARTHUR CALDERON, Warden; TEENA FARMON, Warden of the Central California Women's Facility; C.A. TERHUNE, Director, California Department of Corrections; DANIEL E. LUNGREN, Attorney General,

Petitioners,

v.

TROY A. ASHMUS, of himself as an individual and on behalf of himself and all others similarly situated,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF RESPONDENT

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CAPITAL CASE
QUESTIONS PRESENTED

1. Did the Court of Appeals correctly conclude that the Eleventh Amendment does not bar an action to determine whether the State of California is entitled to the benefits of Chapter 154 where State officials' threats to invoke Chapter 154 deprived habeas petitioners of "their right to federal review of their habeas petitions, pursuant to Chapter 153 of Title 28, and their right to the assistance of counsel, pursuant to 21 U.S.C. § 848(q)," *Ashmus v. Calderon*, 123 F.3d 1199, 1204 (9th Cir. 1997), and where the State concedes that such a determination could be made in an individual habeas proceeding without offending the Eleventh Amendment?

2. In effectuating its declaratory judgment, did the District Court properly invoke its inherent authority to enjoin State officials from asserting that the State of California has qualified under the provisions of Chapter 154 and require the parties to this action to litigate the application of Chapter 154 in one forum?

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STATEMENT OF THE CASE

A. THE OCCASION FOR THIS LAWSUIT

On April 24, 1996, President Clinton signed the Anti-terrorism and Effective Death Penalty Act ("AEDPA"), Pub. L. 104-132, 110 Stat. 1214 (1996), amending provisions in Chapter 153 and creating a new Chapter 154 of the Judicial Code, codified at 28 U.S.C. sections 2261-2266. The new Chapter 154 provides expedited procedures and a more limited scope of federal review of capital cases in States that guarantee death-sentenced prisoners the appointment of competent counsel and the litigation resources necessary to develop constitutional claims in state habeas proceedings. 28 U.S.C. §§ 2261, 2265. The procedural benefits accorded States that fulfill the requirements of Chapter 154 include the following:

1. Statute of Limitations. Death-sentenced prisoners have only 180 days following state direct review to file a federal petition. 28 U.S.C. § 2263(a).

2. Expedited Procedures for Consideration of Habeas Petitions. The district court must issue a final decision within 180 days after the filing of the petition, during which time the parties have 120 days to complete all proceedings in the case, including an evidentiary hearing. The court of appeals is required to issue its decision within 120 days after the filing of the reply brief. 28 U.S.C. § 2266.

3. Limits on Amendments. Once the State answers the petition, any amendment is treated as a successor petition. 28 U.S.C. § 2266(b)(3)(B).

> 4. Limitations on the Issuance of Stays of Execution. The petitioner has no right to a stay of execution to obtain appellate review of the denial of relief, and "no Federal court thereafter shall have the authority to enter a stay of execution in the case, unless the court of appeals approves the filing of a second or successive application." 28 U.S.C. §§ 2262(b)(3), (c).

If a State does not comply with the requirements of Chapter 154, death-sentenced prisoners are entitled to review of their federal habeas petitions in accordance with the procedures contained in Chapter 153. *See, e.g., Lindh v. Murphy*, ___ U.S. ___, 117 S. Ct. 2059, 2063 (1997) (Chapter 154's "special rules favorable to the state party" "applicable only if the State meets certain conditions").

Prior to and after the enactment of the AEDPA, the Attorney General of the State of California and his agents (hereafter "State officials") issued press releases and made numerous official public announcements threatening to invoke the provisions of Chapter 154. *See, e.g., Ashmus*, 935 F. Supp. 1048, 1056 (N.D. Cal. 1996), *reprinted in* Appendix to Petition for Writ of Certiorari (hereafter "Pet. App.") 30a-31a (finding that State officials "have consistently and vigorously maintained that California qualifies for Chapter 154's benefits" and have "threatened to invoke chapter 154 in all federal court proceedings involving members of the proposed class"); Exhibits in Support of Application for Temporary Restraining Order, Temporary Declaratory Relief, and Preliminary Injunctive Relief, filed April 24, 1996, Exhibit 3 (hereafter "Exhibit 3"). Moreover, the State officials insisted that because Chapter 154 applied retroactively under AEDPA

section 107(c), these provisions were immediately effective in cases pending in federal court as well as all future federal habeas proceedings. *See, e.g., Ashmus*, 935 F. Supp. at 1060, Pet. App. 39a-40a; Exhibit 3.

In light of the significant differences between the expedited procedures in Chapter 154 and those in Chapter 153, the State officials' statements and subsequent attempts to invoke Chapter 154 created substantial uncertainty and concern about which procedures would govern pending and future federal habeas proceedings. For death-sentenced prisoners, the uncertainty of whether Chapter 154 applied created an untenable dilemma: they could either gamble that Chapter 154 did not apply and let its limitations period expire without filing proceedings that were necessary to preserve their right to federal judicial review of their constitutional claims if it did, or they could attempt to comply with Chapter 154's time limitations and risk jeopardizing the merits of their claims by filing federal proceedings without adequate preparation or the quality of representation that Congress has sought to assure as a precondition for imposing the limitations.

To obtain an expeditious, uniform determination regarding the applicability of Chapter 154, Troy Ashmus commenced this action on behalf of all California death-sentenced prisoners (hereafter "class members"). Joint Appendix (hereafter "J.A.") 2-18. The complaint alleged that the State officials' claimed entitlement to the benefits of Chapter 154 violated federal law, created a climate of confusion, and sought to secure the benefits of that chapter without the State having satisfied its requirements of providing competent counsel and litigation resources in

State postconviction proceedings. J.A. 3-5, 13-17. The class members invoked the District Court's jurisdiction pursuant to 28 U.S.C. sections 1331 and 1343(a)(3). J.A. 6. The complaint and accompanying application for equitable relief sought a declaration that California did not qualify for Chapter 154's benefits and an injunction prohibiting the State officials from maintaining otherwise. J.A. 17-18.

Following commencement of this action but prior to the issuance of a temporary restraining order, the State officials carried through on their threats by claiming entitlement to Chapter 154 procedures in several pending capital habeas proceedings. *See, e.g., Ashmus*, 935 F. Supp. at 1056, Pet. App. 30a. They created further uncertainty by asserting confusing and inconsistent positions regarding which habeas petitioners they believed were subject to Chapter 154's provisions.[1]

[1] The record before the District Court demonstrated that the State officials advocated three different interpretations of how Chapter 154 applied to capital habeas petitioners. In one case, the State officials asserted that the capital habeas petition was barred on April 24, 1996, because Chapter 154's statute of limitations applied retroactively. Exhibits in Support of Reply to Opposition to Application for Temporary Restraining Order & Temporary Declaratory Relief, filed May 1, 1996, Exhibit 6 at 14. In the District Court, the State officials initially asserted that Chapter 154 applied to all California death-sentenced prisoners, but that the statute of limitations began to run on April 24, 1996. Memorandum of Points and Authorities in Opposition to Application for Temporary Restraining Order & Temporary Declaratory Relief, filed April 29, 1996, at 2-3. The State officials later amended their position to assert that Chapter 154 does not apply to any death-sentenced prisoner whose judgment was affirmed by the California Supreme Court prior to June 6, 1989.

At the time of the State officials' actions, 439 death-sentenced prisoners were affected by the potential applicability of Chapter 154 to federal capital habeas proceedings. The 387-member plaintiff class certified by the District Court consisted of all individuals who were sentenced to death by California courts, except the 52 persons whose judgments were affirmed prior to June 6, 1989, and for whom the State officials conceded Chapter 154 did not apply. *Id.* at 1063-1069, Pet. App. 48a-61a. It included more than 130 persons who were before the California Supreme Court "without counsel and likely to remain so for some time." *Id.* at 1055, Pet. App. 27a.

B. DISTRICT COURT PROCEEDINGS

Finding that the class of death-sentenced plaintiffs faced irreparable injury without a prompt judicial determination of the law governing federal habeas proceedings, *id.* at 1056, 1075-1076, Pet. App. 31a, 77a-78a, the District Court expedited consideration of the procedural and substantive issues in this case. Finding a significant likelihood that plaintiffs would prevail on the merits, plaintiffs will suffer irreparable injury, and the balance of hardship favored plaintiffs, the District Court issued a temporary restraining order prohibiting the State officials from "asserting that the state of California has complied with or is entitled to the benefits of the provisions of new Chapter 154 of Title 28, United States Code, in any state or federal proceedings involving any prisoners under

Exhibits in Support of Reply to Opposition to Application for Temporary Restraining Order & Temporary Declaratory Relief, filed May 1, 1996, Exhibit 7 at 5 n.3.

sentence of death by the State of California." J.A. 22. Without mentioning the Eleventh Amendment defense now raised in this Court, the State officials unsuccessfully sought mandamus relief from the temporary restraining order in the Ninth Circuit and this Court. *See Ashmus*, 935 F. Supp. at 1058, n.10, Pet. App. 36a n.10.

On May 15, 1996, the District Court extended the temporary restraining order for an additional ten days to permit "a carefully considered decision," minimize "duplicative litigation over, and ensur[e] expeditious review of, the applicability of Chapter 154 to California." J.A. 25-26. In response to the State officials' First Amendment concerns, the District Court modified the temporary restraining order to prohibit the State officials from "trying or seeking to obtain for the State of California the benefits of the provisions of Chapter 154." J.A. 26.

On May 23, 1996, the District Court conducted a hearing on the class members' application for declaratory and injunctive relief. Following the hearing, the court concluded that the class members were entitled to a declaratory judgment that California failed to qualify for the benefits of Chapter 154 and an injunction preventing the State officials from trying or seeking to obtain those benefits. The court issued a preliminary written order of its findings and conclusions the next day. J.A. 29-43. The District Court supplemented its factual findings and conclusions of law in an order issued on June 14, 1996. Pet. App. 25a-80a.

The District Court concluded that the class members had satisfied all jurisdictional requirements to maintain this action.[2] It held that it had subject matter jurisdiction pursuant to 28 U.S.C. sections 1331 and 1343(a)(3); each member of the plaintiff class had suffered actual injury as a result of the State officials' incorrect assertions regarding Chapter 154 and therefore satisfied Article III's standing requirement; the issue of California's compliance with Chapter 154's requirements was ripe for decision; and plaintiffs stated a cause of action under the Declaratory Judgment Act, 28 U.S.C. section 2201, and under 42 U.S.C. section 1983.[3] *Ashmus*, 935 F. Supp. at 1059-1063,

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[2] The District Court did not address the Eleventh Amendment in its order. Although the State officials had initially raised an issue of Eleventh Amendment immunity in their opposition to the application for a temporary restraining order, *see* Memorandum of Points and Authorities in Opposition to Application for Temporary Restraining Order and Temporary Declaratory Relief, filed April 29, 1996, at 6-7, they did not invoke the defense during the declaratory judgment and preliminary injunction proceedings. At no time following the proceedings on the temporary restraining order did the State officials mention the Eleventh Amendment until they filed their answer, which was *after* the District Court had issued its initial declaratory judgment order.

[3] The lower courts concluded that the class members' dispute presented an actual case or controversy and properly invoked federal question jurisdiction pursuant to 28 U.S.C. section 1331, and thus the entry of a declaratory judgment was proper. *Ashmus*, 123 F.3d at 1199, 1026 (9th Cir. 1997), Pet. App. 14a-16a; *Ashmus*, 935 F. Supp. at 1059-1063, Pet. App. 37a-48a; *see also McGrath v. Kristensen*, 340 U.S. 162, 169 (1950). In their Brief before this Court, the State officials question whether the Declaratory Judgment Act created a "cause of action," Pet. Brief 22 n.6, and whether the existence of "[t]he comprehensive

Pet. App. 37a-48a. The court also concluded that the requirements of Federal Rule of Civil Procedure 23 were satisfied, and it certified a class consisting of "all persons who have been sentenced to death by the State of California and are currently awaiting execution pending resolution of their state and federal challenges to their state convictions and sentences, except those such persons whose convictions and sentences were affirmed on direct appeal prior to June 6, 1989." *Id.* at 1063-1069, Pet. App. 48a-61a.

The District Court then analyzed the AEDPA and the State officials' assertions that California had promulgated the requisite mechanism qualifying the State for Chapter 154's benefits in habeas proceedings brought by class members. The court made explicit findings that, contrary to Chapter 154's requirements, California (1) does not have any statute or rule establishing a mechanism for the appointment and compensation of habeas counsel, *id.* at 1072-1074, Pet. App. 69a-75a; (2) does not permit appointed counsel to pursue any habeas claims other than those that appear within the "four corners" of the appellate record, *id.* at 1070-1072, Pet. App. 65a-69a; (3) does not have any enforceable, articulable competency standards governing appointment of capital habeas counsel, *id.* at 1072-1074, Pet. App. 69a-75a;[4] and (4) has a backlog of

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remedial character of the habeas scheme" precludes a suit pursuant to 42 U.S.C. section 1983. Pet. Brief 35 n.12. These questions are not properly before this Court because the State officials did not seek *certiorari* review of them.

[4] In addition to concluding that California lacks any binding or mandatory qualification standards for appointment of counsel in capital cases, the District Court concluded that

over 130 unrepresented prisoners, some of whom have been waiting four years for the appointment of counsel just to begin the capital appeals process, *id.* at 1055, 1074-1075, Pet. App. 27a-28a, 75a. Reasoning that the expedited procedures of Chapter 154 were part of a *quid pro quo* that California failed to satisfy, the Court concluded that the State officials were not entitled to invoke the new, beneficial procedures. *See id.* at 1069, 1075, Pet. App. 62a, 76a-77a.

Finally, the District Court considered the remedy appropriate to protect the class members' rights. The court concluded that, unless it ordered effective relief, the State officials would continue to intimidate class members into complying with Chapter 154 by wrongly asserting that California was entitled to Chapter 154 procedures despite the District Court's contrary ruling. *Id.* at 1075-1076, Pet. App. 77a-78a. The necessity for declaratory and injunctive relief was supported by the District Court's extensive, and unchallenged, factual findings about the nature and effect of the State officials' conduct. The court addressed the State officials' First Amendment concerns by finding that, in the absence of a

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Chapter 154 requires that such qualifications include "experience or competence in bringing habeas petitions." *Ashmus*, 935 F. Supp. at 1074, Pet. App. 73a-74a. The Ninth Circuit concluded that Chapter 154 does "not require previous experience in habeas corpus litigation." *Ashmus*, 123 F.3d, at 1208, Pet. App. 19a. In all other respects, the Ninth Circuit affirmed the District Court's factual findings and legal conclusions regarding the applicability of Chapter 154 to California death-sentenced prisoners. *Id.* at 1207-1208, Pet. App. 18a-20a.

binding determination that Chapter 154 is inapplicable to California, the threats to invoke Chapter 154 in future proceedings forced death-sentenced habeas petitioners to comply with the provisions, thus "secur[ing] for the State the benefits of the Act, regardless of whether California actually provides the competent counsel that states are required by Congress to give plaintiffs as a quid pro quo for receiving such benefits." *Id.* at 1057, 1058, Pet. App. 32a, 35a.[5] The District Court issued a declaratory judgment and preliminarily enjoined the State officials from seeking to obtain the benefits of the new provisions. *Id.* at 1075-76, Pet. App. 76a-79a.

C. THE APPEAL

On appeal, the State officials argued, *inter alia*, that the action was barred by the Eleventh Amendment. A divided panel of the Court of Appeals concluded that this

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[5] *See also Ashmus*, 935 F. Supp. at 1057, Pet. App. 32a ("Defendants' statements during the course of this litigation leave little room for doubt that, absent injunctive relief, they will continue to make such threats and assertions."); *id.* at 1056, Pet. App. 31a ("The absence of a clear and uniformly applicable determination that the State of California has or has not complied with the provisions of Chapter 154 forces all condemned prisoners to choose between the risk of unknowingly relinquishing their entitlement to federal habeas corpus procedures under Chapter 153, or the risk of unknowingly forfeiting any enforcement of their federal constitutional rights."); *id.* at 1058, Pet. App. 34a-35a ("[A]s a factual matter, the Court finds that defendants' threats have caused plaintiffs to forgo their statutory rights and that, absent relief from this Court, defendants' threats will continue to cause such injury. . . . "); *id.* at 1059-60, Pet. App. 39a.

action fell within the exception to Eleventh Amendment immunity established by *Ex parte Young*, 209 U.S. 123 (1908). *Ashmus*, 123 F.3d at 1204-1205, Pet. App. 9a-13a. The court held *Young* controlling because the case at bar fit the classic *Young* mold of a suit seeking only prospective relief against state officials to ensure compliance with federal law and to protect the class members' federal rights. *Id.* at 1205, Pet. App. 12a (until the State complies with Chapter 154 requirements, "it remains in noncompliance with the very federal law it seeks to use against the prisoners; and it seeks to use this law to deprive the prisoners of their rights to federal review under Chapter 153 of Title 28"). The Ninth Circuit found that:

> The plaintiffs . . . have demonstrated that California's announced intention to invoke Chapter 154 without having complied with that Chapter's opt-in requirements . . . threatens to violate their right to federal review of their habeas petitions, pursuant to Chapter 153 of Title 28, and their right to the assistance of counsel, pursuant to 21 U.S.C. § 848(q). *Id.* at 1204, Pet. App. 10a.

The Court of Appeals further concluded that permitting this litigation would "have little, if any, impact on the State's sovereign interests." *Id.* at 1205, Pet. App. 12a. Noting that a determination of the applicability of Chapter 154 could be made in any habeas proceeding without offending the Eleventh Amendment, the court concluded that resolving the issue in a single unified action worked no intrusion on the State's sovereignty:

> California is not complaining about being haled into federal court to determine whether it qualifies under Chapter 154. Instead, California argues the appropriate procedure for resolving

> this dispute is to litigate the issue in each individual federal habeas proceeding, rather than in this single universal action. Whether the issue is resolved in this action or in separate individual habeas proceedings, California acknowledges the issue will be resolved by a federal court into which it will be haled, if not willingly at least resignedly. *Id.* at 1205, Pet. App. 12a.[6]

The Court of Appeals then examined the State officials' claims that California qualified for special treatment pursuant to Chapter 154. Like the District Court, the Court of Appeals concluded that California did not, and it affirmed the grant of declaratory judgment and injunctive relief to effectuate that judgment. *Id.* at 1207-1209, Pet. App. 16a-21a. The Court of Appeals concluded that the injunction did not interfere with the State officials' First Amendment rights, but rather merely prevented them from relitigating the legal question decided against them. *Id.* at 1209, Pet. App. 21a. The court clarified that the injunction applies to the "current state of California law," and that it may be modified by the District Court "depending upon future events." *Ibid.*

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[6] Since the granting of *certiorari*, the Eleventh Circuit similarly has concluded that the Eleventh Amendment does not bar an action seeking to prevent State officials from wrongfully asserting entitlement to Chapter 154 benefits. *Hill v. Butterworth*, ___ F.3d ___, 1997 WL 767352 *2-3 n.7 (11th Cir. Dec. 15, 1997).

SUMMARY OF ARGUMENT

The State officials' entire Eleventh Amendment argument rests on two contentions. *See* Pet. Brief 23 (summarizing the two points). One is that in order to be subject to suits permitted by the Eleventh Amendment under the doctrine of *Ex parte Young*, a state officer must either "violate" or "enforce" federal law and must do so in the special sense of either *single-handedly bringing about results* forbidden by federal law or *threatening to "commence" legal proceedings* that will produce such results. *See* Pet. Brief 24, 26-31.

Nothing in this Court's jurisprudence supports such a crabbed view of the *Young* doctrine. The principle of *Young*, repeatedly approved and applied in subsequent cases, is that when state officers act in ways that threaten to defeat the execution of federal law, they go beyond the sphere of immunity that the States enjoy under the Eleventh Amendment, and they can therefore be sued in federal court in order to effectuate the paramount authority of federal law under the Supremacy Clause. In this case, California officials were found to be interfering with the execution of the AEDPA by intimidating death-sentenced inmates into forfeiting procedural protections carefully erected by Congress, with the result that the officials could reap the benefits of Chapter 154 without bearing the obligations on which those benefits were conditioned under the federal statutory structure. This exposed the State officials to declaratory and injunctive relief under familiar principles with which they have prudently declined to take issue in the petition for *certiorari*, and it is more than sufficient to bring them within the settled scope of *Ex parte Young* and its progeny.

The State officials' second Eleventh Amendment contention is that *Young* permits an equitable suit only when that particular form of action is "necessary" due to an absence of alternative federal remedies. *See* Pet. Brief 23. They assert that because California death-sentenced inmates can litigate the applicability of Chapter 154 in the context of individual habeas corpus cases, declaratory and injunctive relief are precluded. *See* Pet. Brief 20-21, 32-41.

This submission, which would turn the Eleventh Amendment from a rule of immunity into a set of rules about priorities among particular causes of action and forms of relief, is unsupported by either precedent or principle. Under both, the only question of "necessity" that arises in applying the Eleventh Amendment doctrine of *Ex parte Young* is whether the exertion of federal jurisdiction is needed to prevent a State officer from interfering with the implementation of federal law or the exercise of federal rights. Once federal jurisdiction is properly invoked – under the various requirements for declaratory and injunctive relief that the courts below found were met in the present case and that have not been put in issue by the State officials' petition for *certiorari* here – the choice of remedies is not constrained by the Eleventh Amendment.

The State officials' contention that declaratory and injunctive relief are foreclosed by the First Amendment is similarly flawed. The District Court's injunction merely prevents those officials from attempting to obtain the benefits of Chapter 154 unfairly through the use of duplicative litigation and threats. The *quid pro quo* offered by Chapter 154 is a systemic benefit designed to apply, if at

all, to a state jurisdiction as a whole. Requiring the State officials to present their arguments regarding Chapter 154 in one forum and binding them by the resulting judicial determination is not a novel exercise of a court's authority or a violation of any State official's rights.

ARGUMENT

I.

THE ELEVENTH AMENDMENT DOES NOT BAR THIS ACTION.

Whether Chapter 154's procedures govern federal habeas proceedings in California is indisputably a question of grave importance to over 400 death-sentenced prisoners, the federal judiciary, and State officials. At a minimum, the application of Chapter 154 would require the District Courts in California to dramatically reorder their dockets so as to issue expedited decisions in all of the approximately 145 pending cases and would require the Court of Appeals to rush to decide every appellate issue in all of these cases within 120 days after the filing of the reply brief. Application of the new procedures would also cut in half the time that is otherwise available for appointed counsel to perform the tasks necessary to provide the professional representation to which all death-sentenced prisoners are entitled under federal law.

The applicability of Chapter 154's procedures is also a question that, by the very terms of the chapter, must be determined on a systemic, state-wide basis. *See, e.g.*, 28 U.S.C. §§ 2261(b), (c) (Chapter 154 is applicable only if the State establishes a qualifying mechanism that offers

counsel to all State prisoners under capital sentence). As the State officials acknowledged, the State's entitlement to the benefits of Chapter 154 is "a question of law. It's [sic] has California implemented a qualifying mechanism. And in order to determine that, you look at the enabling legislation- . . . . California qualifies or not." Reporter's Transcript of May 3, 1996 Proceedings, at 4; *see also* Supplemental Briefing Per Order of May 15, 1996, filed May 17, 1996, at 7 ("general applicability of Chapter 154 in California does not turn on such case-specific matters").

Absent a definitive judicial answer to the question whether "California qualifies or not," capitally-sentenced inmates were faced with two untenable choices: either proceed as if Chapter 154 did not apply and thereby risk the forfeiture of potentially meritorious claims against their convictions and death sentences if the time limitations of Chapter 154 were later found to be applicable; or attempt to comply with those stringent limitations, and thereby forego full investigation and adequate factual and legal development of their constitutional claims. The Declaratory Judgment Act was enacted precisely because this kind of "choice" poses a "dilemma [into which] no civilized legal system operating under a constitution should force any person." *Steffel v. Thompson*, 415 U.S. 452, 468 n.18 (1974) (quoting Hearings on H.R. 5623 before a Subcommittee of the Senate Committee on the Judiciary, 70th Cong. 1st Sess. 75-76 (1928)); *see also Super Tire Engineering Co. v. McCorkle*, 416 U.S. 115, 125-26 (1974).

Thus, the class members sought declaratory relief as an expeditious and uniform means of resolving the applicability of Chapter 154. The resulting determination –

after extensive briefing, hearings, and judicial fact-finding – that California did not qualify for Chapter 154's procedures enables all litigants and courts to proceed with decision-making informed by an awareness of the applicable rules and consequences. As in *Young*, this lawsuit is "undoubtedly the most convenient, the most comprehensive, and the most orderly way in which the rights of all parties can be properly, fairly, and adequately passed upon." 209 U.S. at 166.

Although the State officials recognize the importance of deciding Chapter 154's applicability and concede that this is a question for a federal court to decide, they maintain that only this Court may render a definitive ruling on the issue and only after some final habeas corpus judgment comes here for review. Until then, the officials claim they are entitled to enjoy "divergent" answers to the question so that California capital habeas cases are litigated under a chaotic regime in which the State is deemed both to qualify and not to qualify for Chapter 154's benefits. Pet. Brief 44. The officials claim they are entitled to avoid a uniform determination of habeas litigants' rights by virtue of the guarantee of sovereign immunity.

The State officials' Eleventh Amendment argument is premised on a restrictive view of the *Young* doctrine that has no support in this Court's jurisprudence. For the past ninety years, the *Young* doctrine has permitted equitable suits to be brought against State officials to prevent continuing violations of federal law or to ensure the supremacy of federal law. As this Court has recognized, the Eleventh Amendment does not prohibit suits against state officials "to permit the federal courts to vindicate federal

rights and hold state officials responsible to 'the supreme authority of the United States.' " *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 105 (1984) (quoting *Young*, 209 U.S. at 160).

A. THE *YOUNG* DOCTRINE APPLIES BECAUSE THIS LITIGATION SERVES TO RECTIFY AN ONGOING DISREGARD OF FEDERAL LAW BY STATE OFFICIALS AND TO ENSURE THAT THEY COMPLY WITH FEDERAL LAW.

This lawsuit seeks a declaration that California has not satisfied the prerequisites – including the timely provision of competent counsel and litigation resources – to qualify for the benefits of the expedited, preferential habeas procedures that Chapter 154 enacts. The lawsuit thereby seeks to end a chaotic situation in which State officials take advantage of the confusion generated by their unfounded claims that they are in compliance with Chapter 154 and entitled to its benefits, so as to enjoy these benefits in contravention of federal law. The District Court found that the State officials' assertions that California has satisfied the requirements of Chapter 154 are factually and legally incorrect; that their erroneous assertions were creating confusion and coercing habeas petitioners to follow Chapter 154's abbreviated timetables without the State providing the compensating legal services and resources required by the statute; and, as a result, that the State officials' actions were thwarting the aims of Congress in enacting the AEDPA. *Ashmus*, 935 F. Supp. at 1056-1058, 1070-1075, 1075-1076, Pet. App. 31a-35a, 65a-75a, 78a. A majority of the Ninth Circuit panel agreed. *Ashmus*, 123 F.3d at 1204, 1207-1209, Pet.

App. 10a-13a, 16a-20a. The sole effect of the rulings below is to ensure that these officials comply with Chapter 154 either by satisfying its prerequisites or by refraining from making wrongful claims that give them the advantage of the chapter's expedited habeas procedures without legally deserving them.

Where, as here, a lawsuit seeks to enforce a state official's future compliance with federal law, the Eleventh Amendment does not apply. "It is beyond dispute that federal courts have jurisdiction over suits to enjoin state officials from interfering with federal rights." *Shaw v. Delta Air Lines, Inc.* 463 U.S. 85, 96 n.14 (1983) (citing *Ex parte Young*, 209 U.S. at 160-162). Indeed, this Court recently reaffirmed that the *Young* exception permits suits to ensure that state officers' conduct "is in compliance with federal law." *Seminole Tribe v. Florida*, 517 U.S. 44, 116 S. Ct. 1114, 1131 n.14 (1996); *see also Idaho v. Coeur d'Alene Tribe of Idaho*, ___ U.S. ___, 117 S. Ct. 2028, 2038 (1997) (principal opinion of Justice Kennedy) ("where prospective relief is sought against individual state officers in a federal forum based on a federal right, the Eleventh Amendment, in most cases, is not a bar"); *Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 146 (1993) ("The doctrine of *Ex parte Young*, which ensures that state officials do not employ the Eleventh Amendment as a means of avoiding compliance with federal law, is regarded as carving out a necessary exception to Eleventh Amendment immunity."); *Quern v. Jordan*, 440 U.S. 332, 337 (1979) (Under *Young*, "a federal court, consistent with the Eleventh Amendment, may enjoin state officials to conform their future conduct to

the requirements of federal law."). Because *Young* vindicates the supremacy of federal law, federal courts have the power to require state officials to conform their conduct to federal statutory, as well as constitutional, law. *See Edelman v. Jordan*, 415 U.S. 651, 663 (1974).

The State officials contend that *Young* applies only when a state officer has the power to "commence" proceedings or to enforce or invoke state law that is in conflict with federal law. Pet. Brief 26. This view of the *Young* doctrine is not supported by any decision of this Court.[7] To be sure, the Court has applied *Young* to permit lawsuits which alleged that state officers had undertaken or threatened to undertake litigation that was inconsistent with federal law. *See, e.g., Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 381 (1992); *Ex parte Young*, 209 U.S. at 156. But this Court has never held or even hinted that *Young* is limited to these circumstances, and such a

[7] The officials' suggestion that they are not "commencing" any action inimical to the class members' federal rights incorrectly assumes that Chapter 154 is self-executing. The application of Chapter 154's provisions in federal habeas proceedings may be waived by a State. *Death Row Prisoners of Pennsylvania v. Ridge*, 106 F.3d 35, 36 (3d Cir. 1997); *Burris v. Parke*, 95 F.3d 465, 468 (7th Cir. 1996) (en banc). Thus, Chapter 154 may not be applied without the officials first raising its application. *Cf. Trest v. Cain*, ___ U.S. ___, 118 S. Ct. 478, 480 (1997) (federal court not required to decide whether procedural default defense applies where state officials failed to assert the defense). Even if a court *sua sponte* raises the applicability of Chapter 154, the State has the burden of demonstrating that it has met the requirements of that Chapter.

limitation would be incoherent with the rationale of *Young*.[8]

Young stands squarely on the principle that the Eleventh Amendment may not be used to shield review of the actions of State officials that interfere with federal rights or interests. This is so because the States cannot authorize their officers to impede federal law – either constitutional or statutory – consistently with the Supremacy Clause. *See, e.g., Green v. Mansour*, 474 U.S. 64, 68 (1985) (application of the *Young* doctrine "gives life to the Supremacy Clause"). It is thus well-established that the Eleventh Amendment does not bar suits against state officials to declare the meaning of federal law with which they must comply. *See, e.g., Coeur d'Alene*, 117 S. Ct. at 2036 (noting that *Young* applies "when the case calls for the interpretation of federal law") (principal opinion of Justice Kennedy). Although state officials may assert that they *are* complying with federal law, the *Young* doctrine permits a

[8] The State officials' attempt to impose a "commencement" or "enforcement" requirement on the Eleventh Amendment stems from their confusion about how *Ex parte Young* operates as an exception to the sovereign immunity defense. *Young* and its progeny did not create a separate and independent cause of action, entitling plaintiffs to relief. Instead, the *Young* doctrine serves to overcome an Eleventh Amendment defense in certain cases that are otherwise properly brought before the federal courts to vindicate violations of federal rights. Justiciability questions such as whether the plaintiffs have a cause of action against the State officials sued, and whether it is ripe, are important ones, but are distinct from a *Young* analysis. The lower courts thoroughly analyzed and resolved the justiciability questions against the State officials. As these issues were not raised in the Petition for Certiorari, they are not before this Court.

federal court to review challenges to their interpretation of the federal law.[9]

The State officials' argument that their conduct cannot constitute a "violation" of federal law ignores the District Court's undisputed factual findings of the consequences of the State officials' conduct. The District Court found – and the State officials do not dispute – that their assertions that California has satisfied the prerequisites of Chapter 154, when it in fact has not, obtains for the State the benefits of Chapter 154 without the State ever having to provide the reciprocal services and safeguards required by Congress under the AEDPA. *See, e.g., Ashmus*, 935 F. Supp. at 1056-58, Pet. App. 31a-35a. Congress explicitly provided that State officials are not entitled to the benefits of Chapter 154, including the ability to demand accelerated federal court procedures in capital cases, unless a State has first ensured that competent counsel with adequate resources are assigned to prepare each case in State court.[10] The State officials' actions

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[9] *See, e.g. Mont v. Heintz*, 849 F.2d 704, 709 (2d Cir. 1988); *Exxon Corporation v. Fischer*, 807 F.2d 842, 845 (9th Cir. 1986), *as amended*, 817 F.2d 1429 (9th Cir. 1987); *Barnes v. Cohen*, 749 F.2d 1009, 1018-1019, 1020 n.7 (3d Cir. 1984), *cert. denied*, 471 U.S. 1061 (1985); *Helms v. McDaniel*, 657 F.2d 800, 806 n.10 (5th Cir. Unit B 1981).

[10] The State officials essentially admit that their objective is to procure the benefits of Chapter 154 without regard to its eligibility requirements when they argue that federal habeas petitioners can eliminate any uncertainty over Chapter 154 by complying with the chapter's timetables until the question is finally resolved, presumably by this Court. Although, at some future date (after the era of the "divergent" opinions that the State officials hope to promote for a while, Pet. Brief 44), the

therefore thwarted the objectives of Congress in enacting the AEDPA, deprived the class members of their rights guaranteed by Chapters 153 and 154, and fell within the *Young* exception. Because the State officials threatened to act in contravention of federal law, habeas petitioners given rights by that law are entitled to vindicate the law's supremacy by filing suit for equitable relief in federal court. *See, e.g. Shaw*, 463 U.S. at 96 n.14; *Ex parte Young*, 209 U.S. at 160.[11]

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class members may each obtain judicial decisions holding that the officials misinterpreted Chapter 154 all along, those holdings will do nothing to ameliorate the harm inflicted in the interim.

[11] The State officials further contend that their threats to invoke Chapter 154's limitations inflict no harm on habeas petitioners without a federal court ruling that adopts the officials' legal conclusions. Pet. Brief 27, 28. This argument confuses justiciability concerns, which are not within the scope of the officials' *certiorari* petition, with the sovereign immunity issue that is. The State officials' actions and the harm caused by those actions are directly relevant to any number of justiciability concerns. For example, the District Court addressed whether the officials' conduct was sufficiently injurious to create an actual case or controversy that would be redressed by a favorable decision. *Ashmus*, 935 F. Supp. at 1059-1060, Pet. App. 37a-40a. The District Court also examined the extent of the harm inflicted by the State officials' conduct in determining whether the dispute between the parties was sufficiently developed for and worthy of adjudication and thus satisfied the ripeness doctrine. *Id.* at 1060-1061, Pet. App. 40a-43a. Similarly, the District Court determined whether the State officials' actions gave rise to a cognizable cause of action. *Id.* at 1061-1063, Pet. App. 43a-48a. The District Court thoroughly addressed each of these justiciability concerns; the State officials did not raise them in the Petition for Writ of Certiorari; and they are not matters that can be smuggled into an Eleventh Amendment defense.

Not only do the State officials misconstrue *Ex parte Young*, but they fail to identify any constitutional purpose or concern that would be served by their proposed narrowing of the *Young* doctrine. They decry the Ninth Circuit's decision as a gross affront to the State's sovereignty; yet they never explain precisely how California's sovereign interests are more appreciably affected by this litigation than if the State had been required to respond to motions for rulings on the applicability of Chapter 154 in the approximately 145 habeas cases currently in federal court. In determining the "scope and application of *Ex parte Young*," this Court has sought to ensure that sovereign immunity remains meaningful while preventing violations of federal law, *Coeur d'Alene*, 117 S. Ct. at 2034. Here, the class members' request that the federal court interpret a federal statute implicates no state sovereignty interests.[12] The right to control federal

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[12] The State officials' current position that they are entitled to conduct piecemeal litigation of a question common to all class members is inconsistent with their approach in the Ninth Circuit. Until the Ninth Circuit rejected the State officials' view of Chapter 154, the State officials had urged the court to resolve the dispute in a manner that eliminated the possibility of obtaining "divergent opinions" about the applicability of Chapter 154. Following the decision in *Booth v. Maryland*, 112 F.3d 139 (4th Cir. 1997), *petition for cert. filed*, No. 97-5623, the State officials urged the Ninth Circuit to order the District Court to rule in Mr. Ashmus's habeas proceeding on a declaratory judgment motion based on the pleadings and records in this case and expedite an interlocutory appeal from the ruling. Appellants' Supplemental Responsive Brief at 14-15. Had the Court of Appeals followed the State officials' suggestion, the same panel would have resolved the same legal issues on the same record presented in this case, all without changing the ultimate result or the effect on the State's sovereignty.

dockets, deprive habeas petitioners of their federal rights to judicial review of constitutional issues, and prevent the orderly administration of federal procedures are not "essential attribute[s] of sovereignty." *Id.* at 2041.

This Court has recognized limited exceptions to the *Young* doctrine where there is a "real affront to a State of allowing a suit to proceed." *Id.* at 2038 (principal opinion of Justice Kennedy). In actions against state officials, the State has an interest "whenever state policies or procedures are at stake." *Id.* at 2034. State interests thus are implicated when a federal court is asked to preclude the enforcement of a state statute or administrative procedure, or enjoin pending criminal proceedings, *see, e.g., Coeur d'Alene*, 117 S. Ct. at 2037-2038 (principal opinion by Justice Kennedy); where the action against the State was "the functional equivalent of a quiet title action which implicates special sovereignty interests," *see, e.g., id.* at 2040; where the action is "in essence one for the recovery of money from the state," *Edelman*, 415 U.S. at 663 (quoting *Ford Motor Co. v. Dept. Of Treasury of Indiana*, 323 U.S. 459, 464 (1945)); *see also Hess v. Port Authority Trans-Hudson Corp.*, 513 U.S. 30, 47 (1994); or where the action seeks to force state officials to conform their conduct to state law, *Pennhurst*, 465 U.S. at 106.

But this suit does not implicate any such interests, nor does it seek the "far-reaching and invasive relief" sought by the plaintiffs in *Coeur d'Alene*, 117 S. Ct. at 2040. Rather, class members sought an interpretation of a federal statute and a determination of whether California qualified for special treatment pursuant to that statute. The only state action affected by the litigation is the State officials' incorrect and misleading assertion that Chapter

154 applies to federal habeas proceedings. Where, as here, any infringement on the State's sovereignty is solely a "necessary consequence of [the officers'] compliance in the future with a substantive federal-question determination," *Edelman v. Jordan*, 415 U.S. at 668, the *Young* doctrine applies. Thus, the nature of the instant proceeding does not constitute a sufficient "affront" to the State to justify departure from the ordinary rule that "[w]hen a plaintiff seeks prospective relief to end an ongoing violation of federal rights, . . . the Eleventh Amendment poses no bar." *Coeur d'Alene*, 117 S. Ct. at 2045 (concurring opinion of Justice O'Connor).[13]

Moreover, as Justice O'Connor recognized in *Coeur d'Alene*, the *Young* exception is especially important when a lawsuit serves a "federal interest in uniformity." *Id.* at 2046. This lawsuit sought a prompt, uniform resolution of the applicability of Chapter 154 in a single proceeding that binds all concerned parties. It sought to avert the

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[13] In *Coeur d'Alene*, Justice Kennedy took an approach to *Ex parte Young* that involves "a careful balancing and accommodation of state interests" and determining "whether there are 'special factors counselling hesitation' " 117 S. Ct. at 2038-39 (quoting *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388, 396 (1971)). Under this approach, a court should consider whether a state forum is available for adjudicating the dispute, whether the dispute involves "special sovereignty interests" or an "essential attribute of [State] sovereignty," and the effect of the federal judicial power on the functioning of the State. As demonstrated above, each of these considerations compels the application of *Young* to this case. This lawsuit affects no special sovereign interest, apart from conforming State officials' conduct to federal law, and no state forum is available for resolving this dispute.

chaos and confusion that a multiplicity of suits would cause. Thus, as the Court of Appeals determined, "efficiency and fairness" – interests that are central to the *Young* exception – compel the conclusion that the Eleventh Amendment does not bar relief. *Ashmus*, 123 F.3d at 1205-1206, Pet. App. 13a.

B. THE AVAILABILITY OF FEDERAL HABEAS PROCEEDINGS TO RESOLVE THE APPLICABILITY OF CHAPTER 154 FOR SOME CLASS MEMBERS DOES NOT FORECLOSE THIS LAWSUIT.

The State officials argue that the Eleventh Amendment bars this action because lead plaintiff Troy Ashmus and approximately one-third of the class could have litigated the inapplicability of Chapter 154 in each of their individual federal habeas proceedings. Pet. Brief 16, 32-33. This argument asserts that (1) the exercise of federal judicial power pursuant to *Young* is permitted only when "necessary," and such necessity is never present when a plaintiff has an alternative federal remedy; and (2) the existence of multiple, individual federal habeas proceedings affords the requisite alternative remedy. Both assertions are incorrect.

1. This Court Never Has Held the *Young* Exception Inapplicable Because an Alternative Federal Judicial Remedy Was Available.

This Court has never suggested that a "necessity" requirement dictates the type of lawsuit that must be brought when invocation of federal jurisdiction is otherwise appropriate under the *Young* doctrine. The only

question of "necessity" raised by *Young* is whether the circumstances of the case make it "necessary to permit the federal courts to vindicate federal rights and hold state officials responsible to 'the supreme authority of the United States.' " *Pennhurst*, 465 U.S. at 105, (quoting *Young*, 209 U.S. at 160). As the State officials explicitly have conceded, the applicability of Chapter 154 to pending federal habeas proceedings is an issue that a federal court must decide. Pet. Brief 26, 27. Indeed, in recognition of "the importance of the underlying issue concerning application of Chapter 154," the State officials "beseeched the District Court" to decide the issue. Pet. Brief 32. The State officials, however, did not want the federal court to "hold [them] responsible to 'the supreme authority of the United States' " in any case other than Mr. Ashmus's. Rather, in pursuit of a presumed constitutional entitlement to "divergent" rulings (Pet. Brief 44), the State officials insist that the federal courts must permit piecemeal litigation of this issue in each of the 145 cases pending in the District Courts of California. The State officials' position is unsupported by any authority and is inconsistent with the notion that "[r]emedies designed to end a continuing violation of federal law are necessary to vindicate the federal interest in assuring the supremacy of that law." *Green v. Mansour*, 474 U.S. 64, 68 (1985).

Were this Court to adopt the State officials' "necessity" requirement, suits for declaratory and injunctive relief against State officials would never be permitted because there is always an alternative forum available for resolving the dispute. Such a requirement would eviscerate the *Young* doctrine and would require plaintiffs to

seek vindication of their federal rights only after enduring the hardships condemned by that doctrine. Neither *Young* nor the Declaratory Judgment Act requires the absence of an alternative federal forum to invoke federal judicial review to prevent threatened injury to federal rights. "Prevention of impending injury by unlawful action is a well-recognized function of courts of equity." *Pierce v. Society of the Sisters*, 268 U.S. 510, 536 (1925). "But 'one does not have to await the consummation of threatened injury to obtain preventive relief. If the injury is impending, that is enough.' " *Babbitt v. United Farm Workers National Union*, 442 U.S. 289, 298 (1979) (quoting *Pennsylvania v. West Virginia*, 262 U.S. 553, 593 (1923)). Thus, when contesting the constitutionality of a state criminal statute, "it is not necessary that [the plaintiff] first expose himself to actual arrest or prosecution to be entitled to challenge [the] statute that he claims deters the exercise of his constitutional rights." *Steffel v. Thompson*, 415 U.S. at 459. Rather, if there exists a credible threat of prosecution under the statute, the plaintiff is "not required to await and undergo a criminal prosecution as the sole means of seeking relief." *Doe v. Bolton*, 410 U.S. 179, 188 (1973). In enacting the Declaratory Judgment Act, Congress "recognized that declaratory relief would 'settle controversies,' and permit the federal courts 'the power to exercise in some instances preventive relief."[14]

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[14] A major purpose of the Declaratory Judgment Act is to afford relief from uncertainty and insecurity. *See, e.g.*, Borchard, Declaratory Judgments 929 (2d Ed. 1941) (Act enables party "to avoid the risks of error or disaster by suing an interested adversary for a declaration of his privilege or immunity before acting on his own view of his rights. . . . The removal of the

California v. Grace Brethern Church, 457 U.S. 393, 410 n.21 (1982) (quoting legislative history). Indeed, at the time the Declaratory Judgment Act was enacted, it was clear that "the fact that another remedy would be equally effective affords no ground for declining declaratory relief." Advisory Committee Notes, 1937 Adoption, to Fed. R. Civ. P. 57. This principle is well-exemplified by the decision in *McGrath v. Kristensen*, in which this Court allowed an alien to challenge the actions of the Attorney General in refusing to suspend deportation through a declaratory judgment suit, rather than forcing the alien to "await the traditional remedy of habeas corpus after his arrest for deportation." 340 U.S. 162, 168 (1950).

The State officials rely on this Court's decisions in *Papasan v. Allain*, 478 U.S. 265 (1986), and *Coeur d'Alene*, 117 S. Ct. at 2038, to support their assertion that lawsuits must be "necessary" to vindicate federal rights before the *Young* doctrine is applicable. Pet. Brief. 16, 20-21, 28, 36 n.13. In *Papasan*, this Court used the word "necessary" to describe the *Ex parte Young* doctrine only in the context of reaffirming the principle of *Pennhurst* that the *Ex parte Young* "fiction" was necessary to ensure the supremacy of federal law. 478 U.S. at 277. In *Coeur d'Alene*, the principal opinion of Justice Kennedy, joined by Chief Justice Rehnquist, relied upon the "necessity" language in previous cases, not to inquire whether another federal judicial remedy is available, but rather to consider whether a state forum is available for vindication of the plaintiff's rights, so that the State need never be brought into

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cloud from his claimed privileges and immunities clarifies the rights of all parties concerned."); *see also id.* at 931.

federal court. 117 S. Ct. at 2034 (principal opinion of Justice Kennedy). Justice Kennedy's approach, of course, responded to relevant Eleventh Amendment policies; the State officials' distortion of it does not.

Similarly, the State officials mistakenly rely upon inapplicable case law in asserting that a plaintiff must demonstrate that "access to the courts" is otherwise foreclosed to invoke the *Ex parte Young* doctrine. Pet. Brief 21. The cases cited in Petitioners' Brief did not involve suits against state officers, let alone decisions that involve the application of *Young*; and the "access to the court" language that the officials repeatedly insist is an essential prerequisite of the *Young* doctrine refers, not to the standard for finding a suit barred by the Eleventh Amendment, but rather to this Court's standard for determining whether an administrative mechanism comports with Due Process. In *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200 (1994), this Court addressed whether the administrative process created by the Federal Mine Safety and Health Amendments Act of 1977 precluded a challenge to the Secretary of Labor's enforcement of the Act. This Court first concluded that Congress's establishment of a comprehensive administrative mechanism for reviewing violations of the Act precluded a challenge in District Court that bypassed the administrative procedures. *Id.* at 216. This Court then addressed the plaintiff's claim that the inability to obtain pre-enforcement declaratory relief under the administrative mechanism violated the Due Process Clause. *Id.* at 216-218; *see also id.* at 220-221 (concurring opinion of Justice Scalia). In concluding that no

such violation occurred, this Court distinguished *the Due Process violation* found in *Ex parte Young*. *Id.* at 218.[15]

The State officials' reliance on this Court's decision in *Reisman v. Caplin*, 375 U.S. 440 (1964), similarly is misplaced. In *Reisman*, taxpayers sued the Internal Revenue Commissioner for declaratory and injunctive relief from subpoenas issued for tax and accounting records. Although the Court of Appeals in that case held that the suit was barred because the United States had not consented to the suit, this Court ruled that equitable relief was unavailable because the taxpayers had an adequate remedy at law.[16] *Id.* at 441-444. The taxpayers argued that their remedy at law was inadequate because the penalties for noncompliance were so severe as to constitute a denial of judicial review. *Id.* at 446. In rejecting the

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[15] The portion of the decision in *Young* cited by this Court in *Thunder Basin Coal Co.* did not address the question of Eleventh Amendment immunity, but rather addressed the question of whether the Minnesota statute was unconstitutional because it imposed "enormous fines and possible imprisonment as a result of an unsuccessful effort to test the validity of the laws." *Young*, 209 U.S. at 148. Only after concluding that the federal court had subject matter jurisdiction and that the State law was unconstitutional did this Court determine whether the Eleventh Amendment shielded the State officials from federal judicial power. This Court's holding that a State official is not entitled to sovereign immunity to perform acts "which he had no legal right to do" did not rely upon the absence of an alternative federal forum. *Id.* at 159.

[16] The State officials have never challenged the exercise of equitable jurisdiction in this case on the grounds that the class members failed to demonstrate the elements of a claim for equitable relief or had an adequate remedy at law. No such claim is properly before this Court.

taxpayers' argument, this Court reviewed the discussion in *Young* regarding the appropriateness of equitable relief. *Id.* at 446-448. Nothing in *Reisman* remotely implies that the *Young* exception to the Eleventh Amendment requires an examination of whether an alternative federal forum is available.

Finally, the officials' reliance on *Seminole Tribe* is unavailing. In *Seminole Tribe*, this Court admonished that federal courts "should hesitate" to apply *Young* when "Congress has prescribed a detailed remedial scheme for the enforcement against a State of a statutorily created right." 116 S. Ct. at 1132. This Court was concerned that, because *Young* offered a plaintiff "the full remedial powers of a federal court," in contrast with a "more modest" statutory remedial scheme, plaintiffs would be motivated to proceed under *Young*, thus making the remedial scheme Congress had established "superfluous." *Id.* at 1133. The present case simply does not implicate these concerns.

The "remedial scheme" that the State officials point to – the habeas corpus statutes – is not a "less intrusive remedy" that would prevent them from being exposed "to the full remedial powers of a federal court."[17] And the present lawsuit does not "render superfluous" the

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[17] As the Court expressly noted in *Seminole Tribe*, the habeas corpus provisions "stand[ ] in contrast" to the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. section 2710(d), the statute at issue therein. 116 S. Ct. at 1133 n. 17 (citing 28 U.S.C. section 2254(e)). The Court noted that the habeas corpus statute is among those "where lower courts have found that Congress implicitly authorized suit under *Ex parte Young*." *Id.*; *see also Brennan v. Stewart*, 834 F.2d 1248, 1252 n.6 (5th Cir. 1988).

procedures provided by the habeas corpus statutes. Far from seeking to circumvent a remedial scheme Congress created, the class members brought this lawsuit to facilitate the implementation of the habeas procedures Congress intended to be applied to death-sentenced prisoners in California.[18]

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[18] The State officials divine an intent by Congress to foreclose suits such as this one because Congress failed to enact pre-AEDPA changes to habeas corpus procedure that, *inter alia*, would have created a private right of action in federal district court for "any aggrieved party" to enforce provisions "for the establishment of a schedule for reasonable hourly rates for the compensation of attorneys." 139 Cong. Rec. S10925, S10930 (text of S.1441, section 8) (1993). Pet. Brief 37. Congress, however, could have failed to enact this legislation for a myriad of reasons, including its understanding that such a remedy was unnecessary in light of the availability of declaratory and injunctive relief to bring state officials into compliance with federal law.

Moreover, Congress's failure to create a right of action to enforce rates of compensation for attorneys says nothing about Congress's desire to foreclose suits to determine whether a State provides competent counsel and reasonable compensation such that it complies with the prerequisites for application of Chapter 154. Indeed, if anything, the absence of any limiting language in the AEDPA demonstrates Congress's intent to permit declaratory actions. Congress enacted the AEDPA with the express intent to limit and foreclose federal judicial review in a number of areas, including habeas proceedings. To effectuate those objectives, Congress explicitly limited federal courts' ability to adjudicate certain disputes. *See, e.g.*, 28 U.S.C. § 2264(a) (limiting in Chapter 154 States district court's review of claims raised and decided on the merits in State court absent specified circumstances); 8 U.S.C. § 1105a (precluding federal courts in actions relating to orders of deportation and exclusion from entering "declaratory, injunctive, or other equitable relief not specifically authorized" by the AEDPA and restricting

2. This Lawsuit is Necessary Because the Alternative Remedy of Federal Habeas is Inadequate.

Even if *Ex parte Young* precluded the class members from seeking equitable relief absent a showing that there are no other proceedings or remedies capable of vindicating their federal rights, the facts of this case would establish the requisite showing. The harm to be remedied by this lawsuit is the uncertainty, and the consequent infringement of class members' entitlement to the benefit of Chapter 153 habeas procedures, that result from the State officials' persistent, erroneous assertions that California qualifies for Chapter 154 status. Until the class members obtained a definitive, binding determination whether California did or did not meet the prerequisites of Chapter 154, they were forced to prepare and litigate their habeas claims under a cloud of uncertainty. Among the most portentous aspects of this uncertainty was the possibility that Chapter 154 might be held to impose a retroactively-applicable 180-day statute of limitations for the filing of habeas corpus claims.

The force of the State officials' own arguments demonstrates that class members could not dispel the uncertainty and obtain a reliable determination of their rights merely by litigating this issue in the context of their individual habeas corpus actions. The officials catalog the substantive and procedural obstacles that prevent the class members from securing a uniform ruling in their

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judicial review to habeas proceedings). The AEDPA contains no similar limitations on a federal court's authority to entertain and resolve a declaratory judgment action regarding the applicability of Chapter 154 to habeas proceedings.

separate cases that would "carry preclusive effect in other habeas cases." Pet. Brief 39. Even if the class members had secured "a truly 'binding' ruling" in habeas proceedings, the officials point out, the "ruling would, at most, dictate conforming *rulings* at the district court level; it would not preclude the state from *asserting* its opposing view, if only to preserve the issue for further review." Pet. Brief 40 (emphasis in original). As envisioned by the State officials, a multiplicity of potentially "divergent" rulings on the question would serve only to compound the uncertainty and postpone definitive resolution of the issue pending "further review" by appellate courts. Thus, the limited remedies available in the context of individual habeas cases would not provide the class members with any measure of finality, predictability, or certainty regarding the procedures that govern the litigation of their claims for relief from judgments of death.

This lawsuit was also necessary to vindicate the federal rights of death-sentenced inmates whose cases were pending on direct appeal or in state habeas proceedings. These class members had no recourse other than the present suit to obtain a timely clarification whether, at the risk of their lives, they could rely on the timetables set by Chapter 153 or were required, as the State officials threatened, to conform to the much faster timetables of Chapter 154. Contrary to the officials' assertion, Pet. Brief 34 n.11, these state prisoners, who had not been provided with the representation and litigation resources that Congress required as a precondition for the State to obtain Chapter 154 benefits, had every "occasion" and "entitlement" to seek relief from the State officials' threats that they might be committing suicide by complying with the procedures

that they thought (and the courts below held) Congress intended to govern their cases. The District Court made undisputed factual findings that, at the time of its ruling, the State officials had failed to provide any attorney to over 130 death-sentenced prisoners, some of whom had been waiting up to four years for the appointment of counsel. *Ashmus*, 935 F. Supp. at 1055, Pet. App. 27a-28a. But for their inclusion in this lawsuit, these unrepresented prisoners could never have ascertained until after the fact whether their cases were governed by the "fast-track" procedures of Chapter 154. Only this lawsuit provided an adequate forum to vindicate these prisoners' rights by forcing the State officials to obey federal law – either by establishing the requisite mechanism for appointment and compensation of counsel in state proceedings as contemplated by Congress, or by foregoing the benefits of Chapter 154 procedures to which they were not statutorily entitled.

A uniform, binding ruling preventing State officials from claiming, in contravention of federal law, that California was entitled to preferential treatment pursuant to Chapter 154 was the only effective remedy in this situation, as the courts below concluded. Indeed, the essence of the State officials' resulting complaint is that the order granting declaratory and injunctive relief has had its desired and "necessary" effect: State officials have been prevented from using endless, bad faith relitigation of a settled issue as a means to create and exploit chaos in federal habeas corpus litigation. Nothing in *Ex parte Young* or its progeny suggests that the class members are constitutionally required to settle for a less effective remedy.

II.

THE DISTRICT COURT PROPERLY INVOKED ITS INHERENT POWER TO ENJOIN STATE OFFICIALS FROM RELITIGATING THE APPLICABILITY OF CHAPTER 154 IN OTHER COURTS.

Despite their abundant use of ample opportunities to present their arguments that California is entitled to the benefits of Chapter 154 in voluminous briefing before the District Court, the Court of Appeals, and in their Petition for Certiorari to this Court, the State officials assert that the District Court's order enjoining them from relitigating that question in individual habeas proceedings is a "content-based, viewpoint-specific restriction on protected expression" and an "impermissible prior restraint of First Amendment freedoms." Pet. Brief 45. They do not contend that the process for resolving the central question in this dispute was flawed or that either the District Court or the Ninth Circuit unfairly restricted their ability to present their arguments in this litigation. Rather, it is because these courts reached a conclusion inconsistent with the State officials' view of Chapter 154 that their constitutional objections arise. Simply put, having lost, the State officials believe that the Constitution guarantees them the right to relitigate the same question in the hope of obtaining a different result in another court.

It does not. The constitutional guarantee of the freedom of speech does not encompass a right to relitigate properly-resolved legal questions and forum shop in the hope of creating divergent judicial decisions. If the State officials' view of the First Amendment were right, courts would be powerless to promulgate and enforce rules

prohibiting the filing of endless motions for reconsideration or limitations on successive habeas petitions because such rules foreclose "legal advocacy in the very fora where legal advocacy is expected to flourish." Pet. Brief 18.

Federal courts are authorized to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a); *see also* 28 U.S.C. § 2202. In *United States v. New York Tel. Co.*, 434 U.S. 159, 172 (1977), this Court explained that federal courts may "issue such commands . . . as may be necessary or appropriate to effectuate and prevent the frustration of orders it has previously issued in its exercise of jurisdiction otherwise obtained." One such command is the issuance of injunctive relief to enforce an "explicit, ongoing order against relitigation of matters [the court] had already decided." *In re "Agent Orange" Product Liability Litigation*, 996 F.2d 1425, 1431 (2d Cir. 1993), *cert. denied*, 510 U.S. 1140 (1994); *see also In re VMS Securities Litigation*, 103 F.3d 1317, 1324 (7th Cir. 1996); *White v. National Football League*, 41 F.3d 402, 409 (8th Cir. 1994), *cert. denied*, 515 U.S. 1137 (1995); *United States v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO*, 907 F.2d 277, 279 (2d Cir. 1990). Injunctive relief barring relitigation of already-decided matters protects against a significant risk of inconsistent rulings, *International Brotherhood*, 907 F.2d at 280-281; avoids repetitive and burdensome litigation; and promotes judicial economy by consolidating all litigation relating to a particular issue in one

forum, *see National Assoc. for the Advancement of Colored People, Minneapolis Branch v. Metropolitan Council*, 125 F.3d 1171, 1174 (8th Cir. 1997); *White*, 41 F.3d at 409.

Here, in a class action, the District Court rejected the State officials' arguments and issued a declaratory judgment that Chapter 154 did not apply to California capital cases. Indeed, the court found that an injunction was necessary precisely because the State officials threatened and sought to relitigate Chapter 154's applicability in each of the 145 individual habeas cases pending in the California federal courts. *See Ashmus*, 935 F. Supp. at 1057, Pet. App. 32a. Such repetitive litigation of the identical issue would not only place a great burden on the federal judiciary's limited resources; it would create a significant risk of inconsistent rulings about Chapter 154's applicability. The effect of such inconsistent rulings would be to resurrect the very uncertainty the declaratory judgment was intended to eliminate.

An injunction against relitigation in these circumstances does not violate the First Amendment. "Not all injunctions which may incidentally affect expression . . . are 'prior restraints'." *Madsen v. Women's Health Center, Inc.*, 512 U.S. 753, 764 n.2 (1994). The injunction simply channeled litigation relating to a complex matter into the federal court that first assumed jurisdiction over the controversy. The State officials remain free to voice their opinion in this litigation and elsewhere; they are prohibited only from expressing it in other *litigation* involving class members. The injunction was not issued because of the content of the State officials' expression, but because their *conduct* in attempting to relitigate Chapter 154's applicability before other courts threatened to

frustrate the District Court's declaratory judgment. *See id.* at 764, n.2.

As the Eighth Circuit has noted, "[r]ules of procedure frequently force litigants into courts not of their choosing, but due process and the First Amendment require only that an impartial forum be available to litigants, and not that the doors of every courtroom in the land be open to them." *Airlines Reporting Corp. v. Barry*, 825 F.2d 1220, 1224 (8th Cir. 1987). Certainly, if a federal court has the power to prevent frustration of its orders by removing potentially inconsistent state law claims to federal court, *NAACP*, 125 F.3d at 1173-1174, or by enjoining the parties before it from pursuing conflicting litigation in other *fora*, *Hillman v. Webley*, 115 F.3d 1461, 1469 (10th Cir. 1997); *White*, 41 F.3d at 409, it can enjoin a party from relitigating in other *fora* issues the court already has decided without affronting First Amendment principles.

CONCLUSION

The judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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